

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JESSE MATEO RODRIGUES,

Defendant.

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ORDER

05-cr-164-bbc

Defendant Jesse Mateo Rodrigues has filed a letter with the court dated January 8, 2014, in which he asks the court to resentence him because his counsel was ineffective. Defendant's letter must be construed as a motion for post conviction relief filed under 28 U.S.C. § 2255 because it is a request to the court to consider the legality of his sentence. His motion must be denied. This is not the first time that defendant has alleged that his counsel was ineffective. On February 4, 2009, defendant filed a motion for post conviction relief under 28 U.S.C. § 2255 in which he made this same allegation. On May 13, 2009, I denied defendant's motion. This court has no jurisdiction to hear another post conviction motion without certification of the motion from a panel of the Court of Appeals for the Seventh Circuit. § 2255(h). To obtain such certification defendant must show that the motion rests on newly discovered evidence or a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously

unavailable to him. Id.

It is probably unnecessary to consider the question of issuing a certificate of appealability. To complete the record, however, I find under Rule 11 of the Rules Governing Section 2255 Proceedings, that defendant has not made a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004), so no certificate will issue.

#### ORDER

IT IS ORDERED that defendant Jesse Mateo Rodrigues's letter requesting a reduction in his sentence is construed as a motion under 28 U.S.C. § 2255 and is DISMISSED for lack of jurisdiction. No certificate of appealability shall issue.

Entered this 21st day of January, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge